

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

WULKAN MONUMENT LLC, an Illinois Limited Liability
Company, d/b/a Wulkan Monument Co., LARRY A. BORN,
individually, and MARIE KANGER-BORN, individually,

Defendants.

NO.

10 CH 31796

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES the Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and brings this action complaining that Defendants, WULKAN MONUMENT LLC, an Illinois Limited Liability Company d/b/a WULKAN MONUMENT CO., LARRY A. BORN, individually, and MARIE KANGER-BORN, advertised for sale and offered burial monuments, grave markers and headstones but failed to deliver such goods as represented in violation of the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et seq.* and states as follows:

PUBLIC INTEREST

1. The State of Illinois and its citizens are and will be adversely impacted by Defendants' unfair and deceptive practices as alleged in this Complaint. Therefore, the Illinois Attorney General brings this action in the public interest of the citizens of the State of Illinois.

JURISDICTION AND VENUE

2. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to the

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CLERK OF COURT
DEPT. OF JUSTICE

provisions of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* ("Consumer Fraud Act"), and her common law authority as Attorney General to represent the People of the State of Illinois.

3. Venue for this action properly lies in Cook County, Illinois, pursuant to Sections 2-101 and 2-102(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, 735 ILCS 5/2-102(a) in that the Defendants are doing business in Cook County, Illinois, and Cook County is the county of residence of the Defendants.

PARTIES

4. Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, is charged with the enforcement of the Consumer Fraud Act.

5. The Defendant WULKAN MONUMENT, LLC was a Limited Liability Company involuntarily dissolved on April 9, 2010 which engaged in the business of creating monuments, grave markers and headstones. WULKAN MONUMENT, LLC's principal business address was 11124 W. 179th Street, Orland Park, Illinois 60467.

6. Defendant LARRY A. BORN resides at 310 Springfield Street, Park Forest, in Cook County, Illinois. Defendant LARRY BORN is being sued individually. Defendant LARRY A. BORN, at all times material to this Complaint, formulated, directed and controlled the acts and practices of Defendant WULKAN MONUMENT, LLC.

7. Defendant MARIE KANGER-BORN resides at 310 Springfield Street, Park Forest in Cook County, Illinois. Defendant MARIE KANGER-BORN is being sued individually. The website used by Defendants, www.wulkan.net, was registered on July 3, 1998 to Defendant MARIE KANGER-BORN, 3033 W. 203rd Street P.O. Box 193, Olympia Fields, Illinois 60461. Defendant MARIE KANGER-BORN at all times material to this Complaint

formulated, directed and controlled the acts and practices of Defendant WULKAN MONUMENT, LLC.

8. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Defendants shall mean that such acts and practices are attributable to, by and through the acts of LARRY A. BORN, MARIE KANGER-BORN and WULKAN MONUMENT's members, owners, employees, or other agents.

TRADE AND COMMERCE

9. Section 1(f) of the Consumer Fraud Act, 815 ILCS 505/1(f), defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, or distribution of any services and any property tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

10. Larry A. Born, Marie Kanger-Born and Wulkan Monument LLC (hereinafter collectively "Defendants") were at all times relevant hereto, engaged in trade and commerce in the State of Illinois by advertising and offering their services as a full-service monument company to the general public of the State of Illinois.

11. To date, 20 consumers have filed complaints against Defendants with the Office of the Illinois Attorney General, and 12 consumer complaints have been filed with the Better Business Bureau.

DEFENDANTS' UNFAIR AND DECEPTIVE BUSINESS PRACTICES

12. Since at least June 1997, the Defendants have advertised and offered their services as a full-service monument company to the general public of the State of Illinois using flyers, internet solicitations, the Yellow Pages and their website at www.wulkan.net.

13. Defendants ask for a deposit of 50% of the total monument order cost.

14. Consumers provide deposits to the Defendants.

15. Defendants have consumers fill out a proof sheet giving a description of the marker and its inscription.

16. Once the proof is completed, the Defendants agree to complete the memorials in a timely manner, but in fact fail to do so.

17. Defendants submit an acceptance form to the cemetery of the consumers' choice which details the memorial type, size and finish.

18. Defendants promise delivery of the memorial within 4 to 8 weeks from the date the proof sheet and cemetery acceptance forms are returned from the cemetery.

19. Consumers make subsequent installment payments on the balances of their accounts with Defendants.

20. Consumers call to check on the status of their memorials and often are unable to reach any agent of Defendants.

21. In some cases, Defendants completed and delivered the memorials, but made errors in the spelling of the deceased persons' names on the memorials, and then failed to correct such errors.

22. In some cases, Defendants misrepresented that the consumer's headstones had been placed at the gravesite when in fact they had not.

23. In some cases, Defendants provided various excuses such as the engraver was ill, photos had been lost, the base had broken, instead of completing the services they agreed to provide or delivering goods they had promised to deliver.

24. Defendants fail to complete and deliver the memorials as ordered. They, nevertheless, keep consumers' payments and fail to offer refunds.

APPLICABLE STATUTES

25. Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, provides in relevant part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

26. Section 2 of the Uniform Deceptive Trade Practices Act, 815 ILCS 510/2, provides in relevant part:

(a) A person engages in deceptive trade practices when, in the course of his or her business, vocation, or occupation, the person:

* * *

(7) represents that goods or services are of a particular standard, quality or grade or that goods are a particular style or model, if they are of another;

* * *

(9) advertises goods or services with intent not to sell them as advertised;

(10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

* * *

(12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

VIOLATIONS

CONSUMER FRAUD ACT

27. The Defendants have engaged in a course of trade or commerce which constitutes unfair and deceptive acts and practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by:

a. advertising goods and services in a particular way, and then not selling them as advertised;

- b. falsely advertising that they feature computerized layouts which are made before the memorial is inscribed to ensure spelling and data accuracy when in fact they use no such layouts;
- c. representing that they would complete monuments in a timely fashion, when in fact they failed to do so;
- d. representing that monuments had been installed, when in fact they had not;
- e. continuing to accept new consumer orders and payments when Defendants have been unable to deliver such goods and services to prior consumers; and
- f. failing to refund consumer payments when goods were not delivered.

REMEDIES

28. Section 7 of the Consumer Fraud Act, 815 ILCS 505/7, provides in relevant part:

Whenever the Attorney General or a State's Attorney has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this Act to be unlawful, and that proceedings would be in the public interest, he or she may bring an action in the name of the People of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction; revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

In addition to the remedies provided herein, the Attorney General or State's attorney may request and the Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with the intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice

declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed \$10,000 for each violation.

29. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides:

In any action brought under the provision of this Act, the Attorney General or State's Attorney is entitled to recover costs for the use of this State.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court enter an Order:

- A. Finding that the Defendants have engaged in trade or commerce in the State of Illinois;
- B. Finding that the Defendants have engaged in unfair or deceptive acts or practices in the course of trade or commerce which constitutes violations of Section 2 of the Illinois Consumer Fraud Act;
- C. Preliminarily and permanently enjoining the Defendants from the use of acts or practices that violate the Illinois Consumer Fraud Act, including but not limited to, the unlawful acts and practices specified herein above;
- D. Declaring all contracts entered into between the Defendants and Illinois consumers by the use of methods and practices declared unlawful are rescinded and requiring that full restitution be made to such consumers;
- E. Revocation, forfeiture, or suspension of any and all licenses, charters, franchises, certificates or other evidence of authority of the Defendants to do business in the State of Illinois;
- F. Assessing a civil penalty in the amount of Fifty-Thousand Dollars (\$50,000.00) per violation of the Illinois Consumer Fraud Act found by the Court to have been committed by the Defendant with intent to defraud. If the Court finds the Defendants have engaged in methods, acts, or practices declared unlawful by the Illinois Consumer Fraud Act,

without intent to defraud, then assessing a statutory civil penalty of Fifty Thousand Dollars (\$50,000.00) all as provided in Section 7 of the Illinois Consumer Fraud Act;

G. Assessing an additional civil penalty in the amount of Ten Thousand Dollars (\$10,000.00) per violation of the Illinois Consumer Fraud Act found by the Court to have been committed by the Defendants against a person 65 years of age and older as provided in Section 7 of the Illinois Consumer Fraud Act;

H. Requiring the Defendants to pay the costs of the investigation and prosecution of this action as provided under Section 10 of the Illinois Consumer Fraud Act; and

I. Providing such other relief as this Honorable Court deems just and proper.

RESPECTFULLY SUBMITTED,

Attorney No. 99000
**THE PEOPLE OF THE STATE OF
ILLINOIS, by LISA MADIGAN,
ATTORNEY GENERAL OF ILLINOIS**

Attorney No. 99000

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